

STATE OF MICHIGAN
COURT OF APPEALS

ALAN MASON and PAMELA MASON,

Plaintiffs-Appellants,

v

TOWNSHIP OF CASEVILLE,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 227582

Tax Tribunal

LC No. 00-265591

Before: White, P.J., and Talbot and E.R. Post*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the decision of the Tax Tribunal setting the true cash value and assessment of their property for the 1999 tax year. We affirm.

Absent fraud, this Court's review of a Tax Tribunal decision is limited to whether the tribunal made an error of law or adopted a wrong legal principle. *Georgetown Place Cooperative v Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The tribunal's failure to base its decision on competent, material, and substantial evidence is an error of law. *Id.* The taxpayer bears the burden of proof with respect to the true cash value of property. MCL 205.737(3).

On appeal, plaintiffs assert that defendant committed fraud in its representations to the tribunal. The natural, common, and ordinarily understood definition of the word fraud embraces both actual and constructive fraud. *General Electric Credit Corp v Wolverine Ins Co*, 420 Mich 176, 188; 362 NW2d 595 (1984). Actual fraud is the intentional use of deception for one's advantage, while constructive fraud only requires a misrepresentation, which need not amount to a purposeful design to defraud. *Id.*, 188-189. Constructive fraud is breach of a legal or equitable duty that tends to deceive others, regardless of the moral guilt of the person committing the fraud. *Sumpter v Kosinski*, 165 Mich App 784, 804; 419 NW2d 463 (1988).

Plaintiffs have failed to establish that defendant's representations to the tribunal were fraudulent. There is no basis for reversing the decision of the tribunal.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post